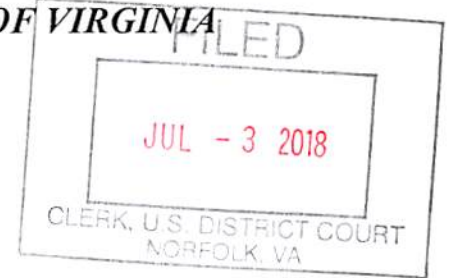


**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF THE COMMONWEALTH OF VIRGINIA
NEWPORT NEWS DIVISION**



J.F.S, A MINOR CHILD)
BY NEXT FRIEND AND SIBLING)
MATTHEW P. STARBUCK)
PLAINTIFF(s), PRO SE)
v)
WILLIAMSBURG JAMES CITY COUNTY)
SCHOOL BOARD)
DEFENDANTS(s))
_____)

ACTION NO: 4:18-CV-63

BRIEF

BRIEF IN SUPPORT OF SHOW CAUSE

COME NOW, MATTHEW P STARBUCK, custodian and general guardian of J.F.S, a minor child in the above styled action, to state his brief in support of the response and reply memorandum by J.F.S, to the ORDER to SHOW CAUSE issued by this Court on June 12th of 2018.

As J.F.S cited in his memorandum to this Court, in Maldonado Ex Rel. Maldonado v. Apfel, 55 F. Supp. 2d 296 (S.D.N.Y. 1999), the court discussed the allowance of minor children to be represented by parents in federal courts. The opinion of the Southern District of New York Court relies upon; "In *Wenger v. Canastota Central School District*, 146 F.3d 123 (2d Cir.1998) (*per curiam*), cert. denied, ___ U.S. ___, 119 S. Ct. 1267, 143 L. Ed. 2d 363 (1999), the Second Circuit ruled that a court must sua sponte apply the Cheung rule where a parent sued under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400 et seq., the Rehabilitation Act of 1973 ("Rehabilitative Act"), 29 U.S.C. § 794, and the Due Process Clause of the Fourteenth Amendment, for injunctive relief, compensatory damages, as well as punitive

damages. Wenger, 146 F.3d at 125. The court ruled that district courts, in deciding whether to appoint counsel, should focus on the minor's need for an attorney and consider the fact that the case will not go forward at all without the appointment of counsel. Id.” However, the Court ruled that the *Cheng* rule in general was inapplicable, relying further on the internal citations to *Wenger* in which a father filed pro se against a school board alleging racial discrimination. *Wenger*, being a of closer relation to this action than the *Maldonado* example.

The Court in the final decision of *Maldonado* stated; “*Here, Ms. Olavarria and Ms. Maldonado represented their children throughout the administrative proceedings. They filed the application for benefits; they compiled the evidence required for the administrative proceeding; they filed a request for reconsideration; they appeared at the hearings before the ALJs; and they appealed the ALJs' decisions to the Appeals Council. There is no reasoned basis to conclude that upon filing their complaints in federal court, Ms. Olavarria and Ms. Maldonado suddenly became incapable of representing their children. Indeed, both mothers have already succeeded in filing complaints and obtaining awards of in forma pauperis status.*”

Prior to this action, Mr. Matthew Starbuck filed an administrative appeal with the school board, filed a petition within a Circuit Court to overturn the decision of the school board, filed multiple motions, oppositions, a brief in support, and substantiated an oral argument before the court, and filed, in accordance to federal rules (with the exception of the redaction policy,) a pleading to this Court. Mr. Matthew Starbuck appeared before the School at the time of the suspension, and had defended the rights of the minor in this action in the same extent as the Court cites in *Maldonado*. Mr. Matthew Starbuck has been awarded an in forma pauperis status in this Court, and the Complaint has been accepted.

To the current extent of this action, Mr. Starbuck has vigorously defended and held the rights of J.F.S as to the extent the current procedures and law allows, both internally, administrative, and external.

It is further explained in the Maldonado holding that, *"Private counsel cannot be expected to become interested in a case of unknown merit. And under Hodge v. Police Officers, 802 F.2d 58 (2d Cir.1986), there is not even a proper basis for the Court to appoint pro bono counsel because a court cannot determine whether the case "seems likely to be of substance." Id. at 61."* in regards to a Court ordered counsel. In this action, the nature of the horrific Tragedy of Valentine's Day lies at the root of this action. Multiple attempts to seek Counsel have been returned empty handed, as the shooting in which this action refers, has caused significant political uproar. While this action only seeks to challenge due process, society as a whole is often unable to remove emotions from discussion of legal precedent, when such precedent comes of political nature, and as such, counsel whom accept to litigate this action might face the same societal backlash, making this action less interesting for them to accept.

As a final matter, within the citational notes of the *Maldonado* opinion, *The district courts have a comparable procedure to assure conflict-free representation pursuant to Federal Rule of Civil Procedure 17(c). To protect the interests of children, district courts may conduct hearings, sua sponte or upon application of the government, to inquire into potential conflicts. See Fed. R.Civ.P. 17(c) ("The court ... shall make such other order as it deems proper for the protection of the infant...."). The government agreed during argument that Rule 17(c) provides broad enough authority to conduct such a hearing, and conceded that it knew of no conflict between the parents and children in the two cases before us. (Tr. at 17-18). Citations to "Tr."*

refer to the transcript of the oral argument held on May 28, 1999."

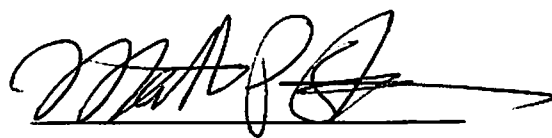
In this action, Mr. Matthew Starbuck has defended the minor before three differing bodies, the administrative body of the Defendant, the Circuit Court of Williamsburg - James City County, and this Court. This Court could substantiate that on the grounds aforementioned, Mr. Starbuck has shown cause for why this action should be allowed to proceed, if not for the appointment of a guardian ad litem. This Court has heard the memorandum of the minor¹ in this action, who explains his personal wishes and desires of this Court and of this case. This action is brought to rectify wrongs made, and to prevent other minor children from suffering at the unlawful actions of the Defendants who through local efforts attempt to hold themselves above the laws of not only the Commonwealth of Virginia, but the United States as a whole. *"While to the petitioners [Matthew, Suzanne and J.F.S.], the suspension of (J.F.S.) was a big ordeal, in actuality a two day suspension is of little harm and importance."* - Defendant at Oral Argument of Demurrer, CL18-676, Cir. Crt. Williamsburg - James City County², Paraphrase, No Transcript Presently Available..

¹ It is worth noting that the minor in this action, J.F.S is currently, at the time of filing, age seventeen, and turns eighteen the following April.

² 830CL18-676 was dismissed with prejudice after the Court heard arguments to the demurrer filed by the Defendant in the action, stating that Matthew lacked standing under the Code of Virginia to pursue the action as the custodian and general guardian in terms of the statute and the case should have been filed under his name alone, and not in the name of the minor by next kinship. Mr. Starbuck argued that the statute was designed as a clarification of title eight of the Code of Virginia and not an abrogation, relying upon *Cherry v Lawson, VA Sup. Ct. 2018* An appeal was denied as a 500USD surety bond was required after an *in forma pauperis* was denied by that Court.

WHEREFORE, for the foregoing reasons, Mr. Matthew P. Starbuck and minor child J.F.S believe they have met the requirements of the ORDER to SHOW CAUSE issued by this Court and under settled principles, should be granted leave to proceed *pro se*, or have counsel appointed by this Court as outlined by *Wenger*.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Starbuck', with a long horizontal line extending to the right.

Matthew P. Starbuck for J.F.S.

General Guardian of Plaintiff, *Pro Se*

4615 Sir Gilbert Loop
Williamsburg, Virginia 23185